

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL DIVISION

L.W., a developmentally disabled individual, by and through his next friend and attorney ad litem, WALTER HONAMAN, ESQ.,

Plaintiff,

Case Number: CACE 11-00236 (02)

vs.

CHILDNET, INC., and IMPACT COMMUNITY SERVICES, INC.,

Defendants.

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**DEFENDANT, IMPACT COMMUNITY SERVICES, INC.'S MOTION TO SET ASIDE  
CLERK'S DEFAULT WITH INCORPORATED MOTION FOR LEAVE TO FILE  
RESPONSIVE PLEADING**

**COMES NOW** Defendant, IMPACT COMMUNITY SERVICES, INC., by and through the undersigned attorneys and pursuant to Florida Rules of Civil Procedure 1.410, 1.500, and 1.540 and hereby submit their Motion to Set Aside Clerk's Default with Incorporated Motion for Leave to File Responsive Pleading as follows:

1. The subject lawsuit stems from allegations of child on child sexual abuse and neglect involving the Plaintiff, L.W., which allegedly occurred in a group home setting between approximately August 3, 2007 and March 27, 2008.
2. Defendant, IMPACT COMMUNITY SERVICES, INC. was administratively dissolved on September 25, 2009.
3. On or about January 5, 2011, Plaintiff filed its Complaint in the above-named matter.

4. On or about June 3, 2015, upon information and belief, a Clerk's Default was entered against IMPACT COMMUNITY SERVICES, INC.

5. On or around July 13, 2015, the undersigned law firm was retained to defend IMPACT COMMUNITY SERVICES in this lawsuit. Trial partner J.W. Webb, Esq. of Lydecker|Diaz immediately called Plaintiff's counsel, Stacie Schmerling, Esq. to inform her of his appearance. During their July 13, 2015 conference, Counsel agreed that Plaintiff would set aside the Clerk's Default against IMPACT COMMUNITY SERVICES, that IMPACT COMMUNITY SERVICES would file a responsive pleading within ten (10) days of July 13, 2015. Ms. Schmerling subsequently conditioned her assent on the production of certain insurance information. Likewise, Co-Defendant, CHILDNET, INC. has no objection to setting aside the Clerk's Default against IMPACT COMMUNITY SERVICES. The parties' correspondences regarding the same are attached hereto as **Composite Exhibit A**.

6. This Court has authority to set aside a default pursuant to Florida Rules of Civil Procedure 1.500 and 1.540.

7. Under appropriate circumstances the courts should set aside defaults so that lawsuits may be determined on their merits. *Bland v. Viking Fire Protection Inc. of the Southeast*, 454 So.2d 763 (Fla. 2nd Dca 1984); *Tutwiler Cadillac, Inc. v. Schatzi S. Brockett*, 551 So.2d 12790 (Fla. 1st DCA 1989). These Defendants believes this cause is defensible and should be treated as such.

8. In *Somero v. Hendry General Hospital*, 467 So.2d 1103, 1104 (Fla. 4th DCA 1985) the court stated that “[i]t is axiomatic that Florida jurisprudence favors liberality in the area of setting aside defaults in order that parties may have their controversies decided on the merits.” Further “where inaction results from clerical or secretarial error, reasonable

misunderstanding, a system gone awry or any other of the foibles to which human nature is heir, then upon timely application accompanied by a reasonable and credible explanation the matter should be permitted to be heard on the merits.” *Somero*, 467 So.2d at 1106.

9. The judicial policy of Florida is to liberally grant motions to set aside defaults and default judgments in order to have the case decided on the merits. *North Shore Hospital, Inc. v. Barabar*, 143 So.2d 849 (Fla. 1962); *Mims v. Miller*, 513 So.2d 1120 (Fla. 2nd DCA 1989). Indeed, if there exists as much as “any reasonable doubts the default should be vacated to allow a trial on the merits.” *Adams v. Collee*, 520 So.2d 674, 675 (Fla. 5th DCA 1989); *B-C Amusements, Inc. v. Mystery Fun House*, 381 So.2d 318 (Fla. 5th DCA 1980). The three elements necessary to succeed in a motion to vacate default, namely, excusable neglect, a meritorious defense, and the exercise of due diligence in seeking relief, has now been satisfied by the Defendants herein. See *Broward County v. Perdue*, 432 So.2d 742 (Fla. 4th DCA 1983); *Fortune Insurance Company v. Sanchez*, 490 So.2d 249 (Fla. 3d DCA 1986).

10. This Defendant has meritorious defenses to present to the trier of fact with respect to this case. Defendant’s proposed Answer and Affirmative Defenses is attached hereto as **Exhibit B.**

11. These Defendants have exercised due diligence and acted with immediacy from the time of learning of any Default that may have been entered by the Clerk.

12. The Plaintiff will not be prejudiced by having this matter heard. However, Defendant would be greatly prejudiced if not allowed to present its meritorious defenses.

13. This Motion is not made to delay pending litigation of for any other improper purpose and upon completion.

14. Based on the foregoing, the Defendant, IMPACT COMMUNITY SERVICES, INC., INC. moves this Court to set aside any Clerk Defaults in this matter and permit Defendant to file the attached Answer and Affirmative Defenses.

WHEREFORE, the Defendant, IMPACT COMMUNITY SERVICES, INC. moves this Court to set aside any Clerk Default(s) in this matter and permit Defendants to file the attached responsive pleading.

#### CERTIFICATE OF SERVICE

**I HEREBY CERTIFY** that a true copy of the foregoing was provided via  E-mail;

First Class U.S. Mail;  Facsimile Transmission and/or  Hand-Delivery to **Howard M. Talenfeld, Esquire, and Stacie J. Schmerling, Esquire, Attorneys for Plaintiff**, Talenfeld Law, 1776 North Pine Island Road, Suite 222, Plantation, Florida 33322, [howard@justiceforkids.us](mailto:howard@justiceforkids.us), [stacie@justiceforkids.us](mailto:stacie@justiceforkids.us), [mercedes@justiceforkids.us](mailto:mercedes@justiceforkids.us), Fax no. (954) 206-0442 and to **Maritzta Pena, Esquire, and Renee Gomez, Esquire, Attorney for Defendant, Childnet, Inc.**, Marlow, Adler, et al., 4000 Ponce de Leon Boulevard, Suite 570, Coral Gables, Florida , Fax: (305) 446-3667 on this 23<sup>rd</sup> day of July, 2015.

LYDECKER | DIAZ  
*Attorneys for Defendant, Impact Community Services, Inc.*

390 N. Orange Avenue, Suite 1295  
Orlando, Florida 32801  
(407) 255-2070 - Telephone  
(407) 985-4545 - Facsimile

By:

J.W. WEBB, ESQUIRE  
Florida Bar No.: 0155012  
[jwebb@lydeckerdiaz.com](mailto:jwebb@lydeckerdiaz.com)  
[kc@lydeckerdiaz.com](mailto:kc@lydeckerdiaz.com)

TAIRA H. TOWNE, ESQUIRE  
Florida Bar No.: 0077483  
[towne@lydeckerdiaz.com](mailto:towne@lydeckerdiaz.com)  
[sb@lydeckerdiaz.com](mailto:sb@lydeckerdiaz.com)

# **Exhibit “A”**

**Miami**  
(Also servicing Florida Keys & Ft. Lauderdale)  
1221 Brickell Avenue, Nineteenth Floor  
Miami, Florida 33131  
Telephone: (305) 416-3180  
Facsimile: (305) 416-3190

**Bonita Springs Office**  
(Also servicing Naples & Ft. Myers)  
27499 Riverview Center Blvd  
Suite 405  
Bonita Springs, Florida 34134  
Telephone: (239) 444-4380  
Facsimile: (239) 444-4381

**Jacksonville**  
4720 Salisbury Road  
Jacksonville, Florida 32256  
Telephone: (904) 493-6475  
Facsimile: (904) 493-6026

## LYDECKER | DIAZ

**West Palm Beach Office**  
(Also servicing Daytona)  
301 Clematis Street, Suite 3000  
West Palm Beach, Florida 33401  
Telephone: (561) 655-6661  
Facsimile: (561) 655-6186

**Boca Raton**  
2300 Glades Road  
Suite 440W  
Boca Raton, Florida 33431  
Telephone: (305) 416-3180  
Facsimile: (305) 416-3190

**Tampa**  
4511 North Himes Avenue, Suite 200  
Tampa, Florida 33614  
Telephone: (813) 449-4270  
Facsimile: (813) 873-2330

**Please reply to Orlando Office**

390 N. Orange Avenue  
Suite 1295  
Orlando, Florida 32801  
Telephone: (407) 255-2070  
Facsimile: (407) 985-4545

July 13, 2015

**Stacie J. Schmerling, Esq.**  
Bank of America Plaza  
1776 N. Pine Island Rd., Suite 222  
Fort Lauderdale, Florida 33322

RE: L.W., a developmentally disabled individual, by and through his next friend and attorney ad litem, Walter Honaman, Esq.  
Our File: TBD

Dear Ms. Schmerling:

With regard to the above captioned matter, this will confirm pursuant to our telephone conversation earlier today; that you have agreed to set aside the Default filed in this matter against Defendant, Impact Community Services, Inc. In addition, our office shall have 10 days from today's date to file a response to the Complaint.

This will also confirm receipt of your email providing a copy of the Complaint, Request for Admissions directed to Defendant, Impact, and Request for Production directed to Defendant, Impact. Interrogatories were not provided. Please confirm that there are no Interrogatories directed to Defendant, Impact, at this time.

Finally, please provide our office with a copy of the Return of Service for Defendant, Impact Community Services, Inc., at your earliest opportunity.

If you have any questions or would like to discuss further, please do not hesitate to contact our office. I look forward to working with you regarding this matter.

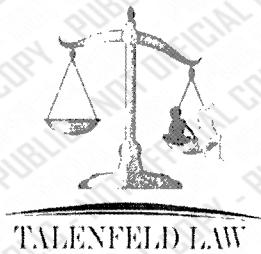
Sincerely,



J.W. Webb, Esquire  
Taira Towne, Esquire

JWW/kc

STACIE J. SCHMERLING  
Stacie@justiceforkids.us



Bank of America Plaza  
1776 N. Pine Island Rd., Suite 225  
Plantation, Florida 33322  
Phone: 754.888.1122  
Toll Free: 844.KIDLAW  
Fax: 954.644.4848  
[www.justiceforkids.us](http://www.justiceforkids.us)

July 13, 2015

J.W. Webb, Esquire  
Lydecker Diaz  
390 N. Orange Avenue  
Suite 1295  
Orlando, FL 32801

Re: L.W. v. ChildNet, Inc., et al.  
CASE NO.: CACE 11-00236 (02)

Dear Mr. Webb:

It was a pleasure speaking with you earlier today. In follow up to our conversation and your letter I received today, it appears that you will need to file a Motion to Set Aside the Clerk's Default against Impact Community Services, Inc., since the Default has already been entered by the clerk. We will not oppose the motion and if the judge's rules allow, we have no objection to you submitting a proposed agreed order to Judge Bowman to set aside the clerk's default.

In addition, this letter shall confirm that there are no Interrogatories directed to Defendant, Impact at this time. Per your request, I am enclosing the return of service for Impact.

Finally, please allow this letter to serve as confirmation that you will be producing Impact's Lexington insurance policies that may provide coverage for the claims set forth in the complaint and any reservation of rights letters that may have been issued. Please produce these within ten (10) days. Please also respond to the discovery I provided you with copies of within thirty (30) days.

If you have any questions or comments, please do not hesitate to contact my office. I look forward to working with you.

Sincerely,

TALENFELD LAW

A handwritten signature in black ink, appearing to read "Stacie J. Schmerling".

Stacie J. Schmerling, Esq.

SJS/ams

*Fighting for abused, disabled and injured kids*

## Taira Towne

---

**From:** Stacie J. Schmerling <Stacie@justiceforkids.us>  
**Sent:** Tuesday, July 14, 2015 10:25 AM  
**To:** J. W. Webb; Taira Towne  
**Cc:** Kimberly Couture; Sara Burns; Howard Talenfeld  
**Subject:** L.W. v. Impact, et al.  
  
**Importance:** High



Mr. Webb:

In follow-up to our correspondence yesterday, please allow this email to serve as clarification with respect to our position on setting aside the default against Impact. Per our conversation, you agreed to provide me with copies of Impact's insurance coverage and any reservation of rights letters. We will not oppose you moving to set aside the default as long as there is insurance coverage and there are no coverage defenses. I look forward to receiving the insurance documents. We will need to see them before we agree to your motion to vacate. Thank you for your anticipated cooperation.

Regards,

Stacie J. Schmerling, Esq.

500 University Street, Suite 1000

Seattle, WA 98101-3143

(206) 467-3333

stacie@justiceforkids.us

www.justiceforkids.us

TMS

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## Taira Towne

---

**From:** Renee Gomez <RGomez@MARLOWADLER.COM>  
**Sent:** Thursday, July 23, 2015 3:01 PM  
**To:** Taira Towne; Betty Zamora; J. W. Webb  
**Cc:** Kimberly Couture; Sara Burns; Maritza Peña  
**Subject:** RE: DISCOVERY TO IMPACT-, L.W./Honaman v. ChildNet, Inc. L404-22098: SERVICE OF COURT DOCUMENT - CASE NUMBER 062011CA000236AXXCE

Taira,

We have no objection.

**Renee Gomez, Esq.**

Marlow, Adler, Abrams, Newman & Lewis  
4000 Ponce de Leon Boulevard, Suite 570  
Coral Gables, FL 33146  
Dir: 305.460.6549  
Main: 305.446.0500  
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Email: [rgomez@marlowadler.com](mailto:rgomez@marlowadler.com)



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Please consider the environment before printing this email.

**From:** Taira Towne [mailto:[ttowne@lydeckerdiaz.com](mailto:ttowne@lydeckerdiaz.com)]  
**Sent:** Thursday, July 23, 2015 2:42 PM  
**To:** Betty Zamora; J. W. Webb  
**Cc:** Renee Gomez; Kimberly Couture; Sara Burns  
**Subject:** RE: DISCOVERY TO IMPACT-, L.W./Honaman v. ChildNet, Inc. L404-22098: SERVICE OF COURT DOCUMENT - CASE NUMBER 062011CA000236AXXCE

Renee,

Will you please confirm that you have no objection to Impact moving to set aside the Clerk's Default in this matter?

Thanks,

**LYDECKER | DIAZ**

# **Exhibit “B”**

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA  
CIVIL DIVISION

L.W., a developmentally disabled individual, by and through his next friend and attorney ad litem, WALTER HONAMAN, ESQ.,

Plaintiff,

Case Number: CACE 11-00236 (02)

vs.

CHILDNET, INC., and IMPACT COMMUNITY SERVICES, INC.,

Defendants.

---

**DEFENDANT, IMPACT COMMUNITY SERVICES, INC.'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

COMES NOW Defendant, IMPACT COMMUNITY SERVICES, INC., by and through the undersigned attorneys and hereby submits its Answer and Affirmative Defenses to Plaintiff's Complaint as follows:

**I. ANSWER**

**JURISDICTION AND VENUE**

1. Admit for jurisdictional purposes only; otherwise deny.
2. Admit for jurisdictional purposes only; otherwise deny.

**THE PARTIES**

3. Without knowledge as to the allegations of paragraph 3 and therefore deny the same and demand strict proof thereof.
4. Without knowledge as to the allegations of paragraph 4 and therefore deny the same and demand strict proof thereof.

5. Without knowledge as to the allegations of paragraph 5 and therefore deny the same and demand strict proof thereof.

6. Without knowledge as to the allegations of paragraph 6 and therefore deny the same and demand strict proof thereof.

7. Without knowledge as to the allegations of paragraph 7 and therefore deny the same and demand strict proof thereof.

8. Without knowledge as to the allegations of paragraph 8 and therefore deny the same and demand strict proof thereof.

9. Denied, as phrased.

10. Denied, as phrased.

11. Denied.

12. Without knowledge as to the allegations of paragraph 12 and therefore deny the same and demand strict proof thereof.

13. Without knowledge as to the allegations of paragraph 13 and therefore deny the same and demand strict proof thereof.

14. Without knowledge as to the allegations of paragraph 14 and therefore deny the same and demand strict proof thereof.

### **GENERAL ALLEGATIONS**

15. Without knowledge as to the allegations of paragraph 15 and therefore deny the same and demand strict proof thereof.

16. Without knowledge as to the allegations of paragraph 16 and therefore deny the same and demand strict proof thereof.

17. Without knowledge as to the allegations of paragraph 17 and therefore deny the same and demand strict proof thereof.

18. Without knowledge as to the allegations of paragraph 18 and therefore deny the same and demand strict proof thereof.

19. Without knowledge as to the allegations of paragraph 19 and therefore deny the same and demand strict proof thereof.

20. Without knowledge as to the allegations of paragraph 20 and therefore deny the same and demand strict proof thereof.

21. Without knowledge as to the allegations of paragraph 21 and therefore deny the same and demand strict proof thereof.

22. Without knowledge as to the allegations of paragraph 22 and therefore deny the same and demand strict proof thereof.

23. The allegations contained within paragraph 23 are not directed toward IMPACT COMMUNITY SERVICES, INC. and contain no allegations against IMPACT COMMUNITY SERVICES, INC.; therefore IMPACT COMMUNITY SERVICES, INC., is not required to nor does it respond to this paragraph. However, too the extent that any portion of this paragraph makes allegations against IMPACT COMMUNITY SERVICES, INC., or to the extent that IMPACT COMMUNITY SERVICES, INC. is required to respond to this paragraph, the allegations therein are hereby expressly denied.

24. The allegations contained within paragraph 24 are not directed toward IMPACT COMMUNITY SERVICES, INC. and contain no allegations against IMPACT COMMUNITY SERVICES, INC.; therefore IMPACT COMMUNITY SERVICES, INC., is not required to nor does it respond to this paragraph. However, too the extent that any portion of this paragraph makes allegations against IMPACT COMMUNITY SERVICES, INC., or to the extent that IMPACT COMMUNITY SERVICES, INC. is required to respond to this paragraph, the allegations therein are hereby expressly denied.

25. Without knowledge as to the allegations of paragraph 25 and therefore deny the same and demand strict proof thereof.

26. Denied.

27. Denied.

28. The allegations contained within paragraph 28 are not directed toward IMPACT COMMUNITY SERVICES, INC. and contain no allegations against IMPACT COMMUNITY SERVICES, INC.; therefore IMPACT COMMUNITY SERVICES, INC., is not required to nor does it respond to this paragraph. However, to the extent that any portion of this paragraph makes allegations against IMPACT COMMUNITY SERVICES, INC., or to the extent that IMPACT COMMUNITY SERVICES, INC. is required to respond to this paragraph, the allegations therein are hereby expressly denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Without knowledge as to the allegations of paragraph 34 and therefore deny the same and demand strict proof thereof.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Denied.

41. Denied.
42. Denied.
43. Denied.
44. Denied.
45. Denied.
46. Denied.
47. Denied.
48. Denied.
49. Denied.
50. Denied, as phrased.

### **COUNT I – NEGLIGENCE OF CHILDNET**

51. As to the allegations of paragraph 51, Defendant incorporates and adopts by reference its responses to the allegations of paragraphs 1 through 50 as set forth above.

52. – 54. The allegations contained within paragraphs 52 through 54 are not directed toward IMPACT COMMUNITY SERVICES, INC. and contain no allegations against IMPACT COMMUNITY SERVICES, INC.; therefore IMPACT COMMUNITY SERVICES, INC., is not required to nor does it respond to these paragraphs. However, to the extent that any portion of these paragraphs makes allegations against IMPACT COMMUNITY SERVICES, INC., or to the extent that IMPACT COMMUNITY SERVICES, INC. is required to respond to these paragraphs, the allegations therein are hereby expressly denied.

### **COUNT II – NEGLIGENCE OF IMPACT COMMUNITY SERVICES, INC.**

55. As to the allegations of paragraph 55, Defendant incorporates and adopts by reference its responses to the allegations of paragraphs 1 through 50 as set forth above.

56. Denied, including all subparts.

57. Denied, including all subparts.

58. Denied.

**COUNT III – VIOLATION OF THE BILL OF RIGHTS FOR THE DEVELOPMENTALLY DISABLED BY DEFENDANT, CHILDNET, INC.**

59. As to the allegations of paragraph 59, Defendant incorporates and adopts by reference its responses to the allegations of paragraphs 1 through 50 as set forth above.

60. – 63. The allegations contained within paragraphs 60 through 63 are not directed toward IMPACT COMMUNITY SERVICES, INC. and contain no allegations against IMPACT COMMUNITY SERVICES, INC.; therefore IMPACT COMMUNITY SERVICES, INC., is not required to nor does it respond to these paragraphs. However, to the extent that any portion of these paragraphs makes allegations against IMPACT COMMUNITY SERVICES, INC., or to the extent that IMPACT COMMUNITY SERVICES, INC. is required to respond to these paragraphs, the allegations therein are hereby expressly denied.

**COUNT IV – VIOLATION OF THE BILL OF RIGHTS FOR THE DEVELOPMENTALLY DISABLED BY DEFENDANT, IMPACT COMMUNITY SERVICES, INC.**

64. As to the allegations of paragraph 64, Defendant incorporates and adopts by reference its responses to the allegations of paragraphs 1 through 50 as set forth above.

65. Denied.

66. Denied.

67. Denied, including all subparts.

68. Denied.

69. Denied.

**II. AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Defendant owed no duty to the Plaintiff and/or did not legally owe the duties as characterized and alleged in Plaintiff's Complaint. Absent such a duty there can be no liability against Defendant. As such, the Plaintiff has failed to state a cause of action against Defendant and the Complaint should therefore be dismissed.

#### **SECOND AFFIRMATIVE DEFENSE**

Defendant at all times, and in all manner, complied with its statutory duties and responsibilities. In the absence of proof of a breach of any such statutory responsibilities, this Defendant is entitled to judgment in its favor herein.

#### **THIRD AFFIRMATIVE DEFENSE**

Defendant had no actual or constructive knowledge of the conditions alleged in Plaintiff's Complaint. Further, Defendant's actions or omissions were not the proximate cause of the Plaintiff's alleged injuries. Therefore, Defendant cannot be held liable for Plaintiff's injuries.

#### **FOURTH AFFIRMATIVE DEFENSE**

While Defendant denies negligence for the events which caused Plaintiff's alleged injuries, Defendant reserves the right to apply the provisions of Fla. Stat. § 768.78 with regard to payment of future economic benefits should a verdict and judgment be entered in this case against it.

#### **FIFTH AFFIRMATIVE DEFENSE**

Defendant is entitled to the protections and privileges, including the statutory caps, provided by law pursuant to Fla. Stat. § 409.1671.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages to the extent they exist, were caused by the actions, inactions, wrongdoing, or negligence of others who were not under the control of Defendant. This

Defendant. The events purportedly giving rise to Plaintiff's cause of action were the responsibility of parties and non-parties other than Defendant.

Under the foregoing facts, Plaintiff is barred from recovery against Defendant. In the alternative, Defendant's exposure should be reduced in proportion to the negligence of all participants in the handling of this mattered, including but not limited to all named parties to this action and other non-parties to be identified during discovery. Fla. Stat. § 768.81; *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993). Parties and non-parties for determination by a jury as to negligent contribution to Plaintiff's injuries include but are not limited to L.W., W.A., FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, CHILDNET, INC., and L.W.'s unknown foster care providers and/or family members.

As discovery and investigation in this case are ongoing, Defendant reserves the right to amend this affirmative defense as appropriate to include additional non-parties whose negligence may have contributed to the Plaintiff's alleged injuries.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to plead with sufficient specificity to recover damages from Defendant for any type of claim upon which relief can be granted. Plaintiff's allegations are replete with conclusory allegations of negligence against Defendant which fail to cite specific actions which directly contributed to Plaintiff's alleged injuries. Further, Plaintiff's allegations do not put Defendant on sufficient notice as to what actions specific to its handling of the case were the direct or proximate cause of the Plaintiff's alleged injuries.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Defendant asserts that liability for the alleged injuries set forth in Plaintiffs' Fourth Amended Complaint were due to the intervening and superseding acts or actions of third parties not under the control, direction, or supervision of Defendant.

Although all liability to the Plaintiff has been denied, any liability found on the part of this Defendant and any damages awarded in favor of the Plaintiff are subject to the comparative fault provisions in Section 768.81, Florida Statutes. This Defendant cannot be held liable for more than its proportionate share of any damages as provided for in that statute. In accordance with Fla. Stat. § 768.81, Defendant is entitled to an apportionment of fault and an apportionment of damages. The Court must enter judgment against each party on the basis of such party's percentage of fault and not on the basis of the abolished doctrine of joint and several liability as provided in the Florida Statutes.

#### **NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim is barred to the extent that WALTER HONAMAN, ESQ.. is found not to be a proper personal representative for the L.W.

#### **TENTH AFFIRMATIVE DEFENSE**

Plaintiff's cause of action is barred by the applicable statutes of limitations because Plaintiff has failed to commence Plaintiff's purported cause of action within the allotted time frame specified in Section 95.11, Florida Statutes.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

If any collateral sources exist which have issued or may issue payments to Plaintiff, to include settlements related to the subject claims, contractual adjustments, and Medicare/Medicaid write-offs, Defendant is entitled to a setoff of all sums paid pursuant to Fla. Stat. § 768.76.

#### **TWELFTH AFFIRMATIVE DEFENSE**

Without admitting that Plaintiff's Complaint states any cognizable cause of action against Defendant, any remedies to Plaintiff are limited to the extent that Plaintiff seeks duplicative

recovery from all co-Defendants in this case pursuant to the various claims against Defendant or others for any alleged single wrong.

#### **THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his damages, if any, and therefore is not entitled to recover any damages which could have been mitigated.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

This Defendant are entitled to any and all protection and privileges of sovereign immunity as provided by law pursuant to Section 768.28, Florida Statutes.

As discovery in this case is ongoing, IMPACT COMMUNITY SERVICES, INC. reserves its right to amend its Affirmative Defenses as additional information becomes available and to conform to the pleadings.

### **III. DEMAND FOR JURY TRIAL**

Defendant hereby demands trial by jury on all issues so triable.

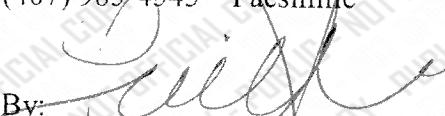
[Remainder of page intentionally blank. Certificate of Service follows.]

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was provided via  E-mail;  First Class U.S. Mail;  Facsimile Transmission and/or  Hand-Delivery to **Howard M. Talenfeld, Esquire, and Stacie J. Schmerling, Esquire, Attorneys for Plaintiff**, Talenfeld Law, 1776 North Pine Island Road, Suite 222, Plantation, Florida 33322, [howard@justiceforkids.us](mailto:howard@justiceforkids.us), [stacie@justiceforkids.us](mailto:stacie@justiceforkids.us), [mercedes@justiceforkids.us](mailto:mercedes@justiceforkids.us), Fax no. (954) 206-0442 and to **Maritza Pena, Esquire, and Renee Gomez, Esquire, Attorney for Defendant, Childnet, Inc.**, Marlow, Adler, et al., 4000 Ponce de Leon Boulevard, Suite 570, Coral Gables, Florida , Fax: (305) 446-3667 on this 23<sup>rd</sup> day of July, 2015.

LYDECKER | DIAZ  
*Attorneys for Defendant, Impact Community Services, Inc.*

390 N. Orange Avenue, Suite 1295  
Orlando, Florida 32801  
(407) 255-2070 - Telephone  
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By: \_\_\_\_\_  
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[sb@lydeckerdiaz.com](mailto:sb@lydeckerdiaz.com)